

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JERRY SIMS,

Plaintiff,

v.

Case No. 07-14380

Honorable Patrick J. Duggan

DR. PAUL PIPER,

Defendant.

**ORDER DENYING DEFENDANT'S MOTION TO
DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on August 8, 2008.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On October 16, 2007, Plaintiff Jerry Sims, presently confined at the Ryan Correctional Facility in Detroit, Michigan, filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983, alleging that Defendant Dr. Paul Piper was deliberately indifferent to his medical needs in violation of the Eighth Amendment. The Court referred all pretrial matters to Magistrate Judge R. Steven Whalen on January 7, 2008. Before the Court is Defendant's Motion to Dismiss Pursuant to FED. R. CIV. P. 12(b)(6).¹ (Doc. No. 16.) On July 3, 2008, Magistrate Judge Whalen issued a Report and Recommendation ("R&R"),

¹ Defendant filed a Motion for Summary Judgment on June 25, 2008. Plaintiff's response is due on August 13, 2008, and the Court does not address the merits of that Motion here.

recommending that Defendant's Motion be denied. (Doc. No. 35.) At the conclusion of the R&R, Magistrate Judge Whalen advised Defendant that he may object and seek review of the R&R within ten days of service upon him. He also advised Defendant that "[f]ailure to file specific objections constitutes a waiver of any further right of appeal."

R&R 11 (citing *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466 (1985); *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991); and *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981)). Defendant has not filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusion reached by Magistrate Judge Whalen.

Accordingly,

IT IS ORDERED that Defendant's Motion to Dismiss Pursuant to FED. R. CIV. P. 12(b)(6) is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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